

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 27, 2006 Session

**CHARLOTTE McCALL v. NATIONAL HEALTH CORPORATION d/B/A
MURFREESBORO HEALTH CENTER, ET AL.**

**Appeal from the Circuit Court for Rutherford County
No. 45480 Robert E. Corlew, Judge**

No. M2004-00261-COA-R3-CV - Filed on August 31, 2006

This case concerns the right of an employee injured under circumstances entitling her to workers' compensation benefits to file a common law tort action against a supervisor, whose actions caused the injury. The trial court concluded that employee's right to sue her supervisor for his allegedly tortious conduct was barred under the exclusive remedy doctrine of the Tennessee Workers' Compensation Law. The judgment of the trial court is reversed in part, affirmed in part, and remanded to the trial court for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed in Part,
Affirmed in Part, and Remanded**

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

John W. Rodgers, James P. Barger, Murfreesboro, Tennessee, for the appellants, National Health Corporation d/b/a Murfreesboro Health Center, NHC Insurance Company n/k/a Premier Group Insurance Company, and Greg Bidwell.

Larry R. McElhaney, II, Nashville, Tennessee, for the appellee, Charlotte McCall.

OPINION

Ms. Charlotte McCall began working for the National Health Corporation ("NHC") in 1992 as the housekeeping and laundry supervisor. Due to an impending annual State inspection, Ms. McCall and her supervisor, Mr. Greg Bidwell, planned a clean-up day on November 23, 2000, in which it was Ms. McCall's responsibility to take the trash cans and liners down to the conference room. However, when Mr. Bidwell arrived at the conference room that afternoon, he noticed that the trash cans were not there. Mr. Bidwell then left the conference room in order to find Ms. McCall. Mr. Bidwell located Ms. McCall in the break room and told her to follow him to her office.

Ms. McCall alleged that Mr. Bidwell was extremely angry and once they entered her office, he began shaking her and telling her that she needed to pay more attention to cleaning the rooms.

On September 20, 2001, Ms. McCall filed a workers' compensation claim against NHC alleging a work-related mental injury as a result of the confrontation with Mr. Bidwell. Ms. McCall also named Mr. Bidwell, individually, seeking recovery for Mr. Bidwell's allegedly tortious conduct during the encounter. A bifurcated trial was conducted solely on the issue of compensability on July 25, 2002, and August 15, 2002. On September 26, 2002, the court determined that Ms. McCall had sustained a compensable injury under the Tennessee Workers' Compensation Law.

On May 23, 2003, Defendants filed a motion for summary judgment as to Mr. Bidwell alleging that the finding of liability under the Tennessee Workers' Compensation Law precluded a finding of individual liability against Mr. Bidwell. A second trial was conducted on the issue of impairment on September 29, 2003. The court found that Ms. McCall was seventy-five percent impaired and awarded her statutory medical benefits, lump sum payment of all accrued benefits, and the balance of her benefits paid according to statute. Appeal was taken to the Workers' Compensation Panel, which ruled on all issues except the granting of summary judgment as to Mr. Bidwell which was transferred to this Court. We therefore address the sole issue of whether the trial court correctly granted summary judgment in favor of Mr. Bidwell.

We review a trial court's decision to grant summary judgment *de novo* upon the record with no presumption afforded to the trial court's conclusions below. *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn.2001). Summary judgment is only appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn.R.Civ.P. 56.04. In making our review, we must "view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor." *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn.2000). "If both the facts and conclusions to be drawn therefrom permit a reasonable person to reach only one conclusion, then summary judgment is appropriate." *Seavers v. Methodist Med. Ctr. of Oak Ridge*, 9 S.W.3d 86, 91 (Tenn.1999).

On October 16, 2003, the trial court granted Mr. Bidwell summary judgment based on the exclusive remedy doctrine. The court's order stated that, "Defendant is entitled to a judgment as a matter of law, the Court having previously found Plaintiff's injury to be a compensable work related injury and Plaintiff's claim for worker's compensation being her exclusive remedy." According to Tennessee Code Annotated section 50-6-108, "the Workers' Compensation Law provides employees with their exclusive remedy against employers for work-related injuries." *Blair v. Allied Maint. Corp.*, 756 S.W.2d 267, 270 (Tenn.Ct.App.1988). Therefore, employees are precluded from suing employers at common law for their injuries unless the employee can show that the employer intentionally injured the employee. *Blair*, 756 S.W.2d at 270. "A co-employee's intentional tort will not give rise to a cause of action against the employer." *Blair*, 756 S.W.2d at 270.

However, the Workers' Compensation Law does not place the same limitations on a common law claim against a co-employee. *Blair*, 756 S.W.2d at 270. In *Blair*, this Court determined that the Workers' Compensation Law does not bar an employee's intentional tort claim against a supervisor. 756 S.W.2d at 270-271. There, plaintiff filed an action against his supervisor and employer alleging assault, outrageous conduct, and breach of implied contract. *Blair*, 756 S.W.2d at 268. Defendants filed a motion for summary judgment claiming in pertinent part, that plaintiff's remedies were limited to those available under the Workers' Compensation Law. *Blair*, 756 S.W.2d at 268. Based partly on the exclusive remedy doctrine, the Court granted defendants' motion and dismissed the complaint. *Blair*, 756 S.W.2d at 268. Plaintiff appealed and the Court reversed the dismissal of plaintiff's claims against his supervisor for assault and outrageous conduct. *Blair*, 756 S.W.2d at 271.

The Court reasoned:

The Tennessee Supreme Court, relying on Tenn.Code Ann. 50-6-112(a) (Supp.1987), has held that an employee may maintain a common law or statutory tort action against a coemployee who intentionally injures that employee. *Taylor v. Linville*, 656 S.W.2d 368, 370 (Tenn.1983); *Williams v. Smith*, 222 Tenn. 284, 292, 435 S.W.2d 808, 811 (1968).

Mr. Blair alleges that Mr. Oakley committed the torts of assault and outrageous conduct. These actions, if proven, are intentional torts. See *Kite v. Hamblen*, 192 Tenn. 643, 646, 241 S.W.2d 601, 603 (1951). There are no allegations or proof that Allied intended to injure Mr. Blair, and thus, Mr. Blair's action against Allied must fail.

While the proof offered by Mr. Blair with regard to his claims against Mr. Oakley is of the weakest sort, it is not our role at this stage of the proceeding to weigh the evidence or to decide whether Mr. Blair has made out a prima facie case. After reviewing the record in the light most favorable to Mr. Blair, we have determined that he has alleged two common law causes of action against Mr. Oakley that are not barred by the Workers' Compensation Law.

Blair, 756 S.W.2d at 270-271 (footnote omitted).

In this case, Ms. McCall alleges that Mr. Bidwell committed the torts of assault, battery, negligence and negligent infliction of emotional distress during the November 23, 2000, encounter. It is well settled in Tennessee that assault and battery, if proven, are intentional torts, *Pendleton v. Metro. Gov't of Nashville and Davidson County*, No. M2004-01910-COA-R3-CV, 2005 WL 2138240, at *1 (Tenn.Ct.App. Sept. 1, 2005), therefore, Ms. McCall's claims for assault and battery against Mr. Bidwell are not barred as a matter of law under the Workers' Compensation Law. However, we find that summary judgment was properly granted on Plaintiff's claim against Mr. Bidwell for negligence and negligent infliction of emotional distress since Tennessee courts have

consistently defined the scope of the intentional tort exception narrowly, and refused to extend the exception to co-employee negligence. *Majors v. Moneymaker*, 270 S.W.2d 328 (Tenn.1954); *Taylor v. Linville*, 656 S.W.2d 368 (Tenn.1983); *Blair v. Allied Maintenance Corp.*, 756 S.W.2d 267 (Tenn.Ct.App.1988). See also *Coffey v. Foamex*, 2 F.3d 157 (6th Cir.1993).

Defendants argue that because the trial court found that Plaintiff suffered a work-related injury compensable under the Workers' Compensation Law, the court implicitly determined that Ms. McCall's injuries arose accidentally in the course and scope of employment.¹ According to Defendants, the implicit finding that Plaintiff's injuries arose *accidentally* precludes individual recovery against Mr. Bidwell since an employee may only maintain a tort action against a co-employee who *intentionally* injures that employee. The Supreme Court of Tennessee addressed this issue in *Williams v. Smith*, 435 S.W.2d 808 (Tenn.1968), where a former employee filed a common law action for injuries sustained as a result of an assault by a co-employee. The Court determined that the employee's common law action against the co-employee was not barred under the fiction created by the Workers' Compensation Law that the employee-victim of an intentional assault sustains an "accident" during a co-employee's intentional tort. *Williams*, 435 S.W.2d at 811. The Court explained:

[W]hat we have to decide is whether or not the fiction, that the employee-victim of an intentional, deliberate assault has sustained an accident because it was unexpected and unintended on his part, can be availed of by an assaulting co-employee to compel his victim to proceed under the Act. And we think the assaulter cannot so compel the victim, because the fiction was created and is allowed to operate solely because this is the fair, right and just thing to do. It is a conclusion based entirely on the effect on the assaulted employee. So that it would be a travesty on justice, indeed, to make this fiction operate in favor of one whose act has been wilful and malicious and intentionally harmful and is in no conceivable sense an 'accident'.

We hold that while the fiction of accident is available to the assaulted employee to sustain a recovery under the Workmen's Compensation Act, this being just and right, this fiction created for the benefit of the injured employee is not available to the intentional assaulter to require that the injured employee proceed under the Workmen's Compensation Act, so to do being unfair and unjust.

Williams, 435 S.W.2d at 811.

¹ Tennessee Code Annotated section 50-6-103(a) provides in pertinent part:

Every employer and employee subject to the Workers' Compensation Law, complied in this chapter, shall, respectively, pay and accept compensation for personal injury or death caused by *accident* arising out of and in the course of employment without regard to fault as a cause of the injury or death; (emphasis added).

Based on the Court's decision in *Williams*, we find that Defendants' argument has no merit.

Defendants alternatively assert that the July 25, 2002, and August 15, 2002, hearing on compensability constituted a full trial on the merits and based on the evidence presented therein, the trial court implicitly found that Mr. Bidwell's conduct on November 23, 2000, was unintentional. We can find no evidence in the record to support this assertion. The opinion letter filed by the court following the compensability hearing limited its discussion and conclusion to whether Plaintiff sustained an injury compensable under the Workers' Compensation Law; there is no mention of Plaintiff's tort claims against Mr. Bidwell. Furthermore, the trial court limited the basis for granting summary judgment in its October 16, 2003, order to Plaintiff's preclusion under the exclusive remedy doctrine, which we have already found was error. The order contains no factual finding by the trial court that Mr. Bidwell's conduct on November 23, 2000, was unintentional.

The judgment of the trial court is therefore reversed in part, affirmed in part, and remanded to the trial court for further proceedings. The costs of appeal are assessed against Appellants.

WILLIAM B. CAIN, JUDGE